

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Improve Public Access  
to Public Records Pursuant to the California Public  
Records Act.

Rulemaking 14-11-001  
(filed November 6, 2014)

**APPLICATION OF CTIA FOR REHEARING OF  
DECISION 16-08-024**

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Dated: September 26, 2016

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Pursuant to Public Utilities Code Section 1731(b)(1) and Rule 16.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), CTIA<sup>1</sup> files this Application for Rehearing of Decision 16-08-024 (“Decision”), which was issued on August 25, 2016. Section 1731(b) requires that an application for rehearing be filed no later than 30 days after the date of issuance of the decision for which rehearing is sought. This application for rehearing is timely filed.

**I. INTRODUCTION AND SPECIFICATION OF ERROR**

The Decision updates the Commission’s processes regarding public disclosure of confidential documents submitted to the Commission by public utilities.<sup>2</sup> Specifically, the

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<sup>1</sup> CTIA – The Wireless Association® (“CTIA”) ([www.ctia.org](http://www.ctia.org)) represents the U.S. wireless communications industry. With members from wireless carriers and their suppliers to providers and manufacturers of wireless data services and products, the association brings together a dynamic group of companies that enable consumers to lead a 21st century connected life. CTIA members benefit from its vigorous advocacy at all levels of government for policies that foster the continued innovation, investment and economic impact of America’s competitive and world-leading mobile ecosystem. The association also coordinates the industry’s voluntary best practices and initiatives and convenes the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> The Decision delegates to the Commission’s Staff the authority to determine, without further action by the Commission or notice to public utilities and the opportunity for them to challenge a determination, whether confidential documents will be made public. (Decision, Conclusion of Law 3 and Ordering Paragraph 2) and provides five “guidelines” for Staff’s use in review of confidential documents. With respect to such guidelines, CTIA does not herein challenge 1, 3, 4, and 5, but reserves the right to

Commission, having concluded that “it can most effectively review potentially confidential documents by delegating the review of the individual documents to the Commission’s Legal Division,”<sup>3</sup> entrusts its Staff with the authority to determine whether a public utility has asserted a “specific substantive basis”<sup>4</sup> for confidential treatment of its documents. If Staff determines that there is no specific substantive basis for confidential treatment, then Staff is authorized to release the document “with no formal action of the Commission required.”<sup>5</sup> The Commission determined that such delegation is justified because “[r]equiring the Commission to approve by formal vote the release of each document that is claimed to be confidential would be extremely time consuming and inefficient, and would result in delays in the Commission responding to Public Records Act requests.”<sup>6</sup> The Commission’s new process for public disclosure of confidential documents unlawfully delegates to Staff the authority to make final discretionary determinations and unconstitutionally empowers Staff to act on such determinations without notice to the affected public utility or the opportunity to be heard regarding the determination.

Under the Commission’s former approach to determining whether to make public information designated confidential, public utilities submitted information under an assertion of confidentiality knowing that such assertion was self-effectuating, unless and until the

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respond to arguments presented thereon in Applications for Rehearing filed by other parties to this proceeding.

<sup>3</sup> Decision, p. 30, Finding of Fact 8; *see also Id.*, Conclusion of Law 3 (“Commission review of potentially confidential documents submitted to the Commission should be delegated to the Commission’s Legal Division.”), and Ordering Paragraph 3 (“Authority for reviewing requests for confidential treatment of documents is delegated to the Commission’s Legal Division.”).

<sup>4</sup> *Id.*, p. 20, Section 3.2 (2).

<sup>5</sup> *Id.* The Decision is unclear regarding the authority afforded Staff to release documents if they deem a public utility’s assertion of confidentiality not to be supported by a “specific substantive basis.” To the extent, however, the Decision is intended to afford Staff such authority, then it effects not only an unlawful delegation of authority, but creates a process for the release of confidential documents which denies utilities their due process rights, as discussed fully herein.

<sup>6</sup> *Id.*, p. 30, Finding of Fact 9.

Commission rejected that assertion and the utility was given an opportunity to challenge the Commission's determination. By contrast, subsequent to the Decision, a key step – indeed a fundamental right – is taken away. It is now the Commission Staff's determination that is self-effectuating, with no right on the public utility's part to challenge Staff's determination. Such a reversal is clearly a due process violation. While the Commission did acknowledge that parties expressed concerns regarding its procedure for the public disclosure of documents marked for confidential treatment, the Decision merely states that parties to the proceeding “will have the opportunity to address this issue and related implementation details later in this proceeding.”<sup>7</sup> In the interim, however, public utilities' due process rights have been abrogated and an unlawful delegation of discretionary authority has been effected, which is why immediate rehearing is warranted. Further, by applying the adopted process for Commission review and release of confidential documents beyond the context of a California Public Records Act (“CPRA”) request, the Commission has exceeded the stated scope of the proceeding. By doing so the Commission has violated its own Rules of Practice and Procedure and thus failed to proceed in the manner required by law.

At least three elements of the Decision constitute reversible error. First, the Decision strips public utilities of their due process rights afforded under the U.S. and California Constitutions.<sup>8</sup> Second, the Decision effects an unlawful delegation of authority from the Commission to its Staff with respect to the final discretionary determination of whether documents submitted by public utilities to the Commission under a claim of confidentiality

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<sup>7</sup> *Id.*, p. 23.

<sup>8</sup> *See* CA PU Code Section 1757.1(a)(6) (“the order or decision of the commission violates any right of the petitioner under the Constitution of the United States or the California Constitution”).

should be released to the public.<sup>9</sup> Finally, the Decision addresses matters outside the defined scope of the proceeding in contravention of the Commission's own Rules of Practice and Procedure.<sup>10</sup>

To correct these deficiencies, rehearing should be granted and the Commission should issue an order on rehearing that: (1) ensures that public utilities submitting information to the Commission under a claim of confidentiality are afforded due process prior to the release of that information; (2) negates the authority delegated to Staff to release confidential information absent further Commission action; (3) complies with the mandates of Section 583 of the Public Utilities Code; and (4) restricts all determinations to matters within the defined scope of the proceeding.

## **II. ARGUMENTS IN SUPPORT OF REHEARING**

### **A. The Decision Deprives Public Utilities Of Their Due Process Rights By Failing To Ensure Such Rights Can Be Exercised Prior to Release of Confidential Documents**

The process adopted by the Commission in Decision 16-08-024 for the review and potential release of confidential documents submitted by public utilities does not guarantee those utilities notice and opportunity to be heard prior to such release. Accordingly, that process is in direct violation of the U.S. Constitution's mandate that no state shall deprive any person of property without due process of law.<sup>11</sup>

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<sup>9</sup> See CA PU Code Section 1757.1(a)(2) ("the commission has not proceeded in the manner required by law").

<sup>10</sup> *Id.*

<sup>11</sup> United States Constitution, 14th Amendment, Section 1.

The U.S. Supreme Court has held that corporations have a property right in their confidential business information.<sup>12</sup> Similarly, courts have been consistent in their recognition that prevention of the dissemination of private information is a protected interest triggering the due process protections of the U.S. Constitution.<sup>13</sup> Public utilities submitting confidential business information to the Commission have a property interest in that information and a protected interest in preventing its disclosure. Therefore, due process requires notice and opportunity to be heard prior to the deprivation of public utilities' interests in nondisclosure of confidential information.<sup>14</sup> The procedures adopted by the Commission, which allow its Staff to release documents that have been submitted to the Commission under a claim of confidentiality, but without notice to and opportunity for the impacted party to be heard, violate public utilities' due process rights afforded under the U.S. Constitution.

Similarly, the California Constitution requires due process of law before a person is deprived of a statutory interest.<sup>15</sup> Unlike Federal courts, California courts have found that neither a property nor a liberty interest is a prerequisite for due process protections under the California Constitution. Rather, the courts have determined that due process rights under the California Constitution attach upon the deprivation of an identifiable statutory interest or benefit.<sup>16</sup>

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<sup>12</sup> See *Carpenter v. United States*, 484 U.S. 19, 26 (1987) ("Confidential business information has long been recognized as property."); see also *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1012 (1984) (recognizing that trade secrets are property interests protected by the takings clause).

<sup>13</sup> See *Great Falls Tribune v. Montana Pub. Serv. Comm'n*, 319 Mont. 38, 50 (2003) (trade secrets and confidential business information are property interests implicating due process); *Zotos Int'l, Inc. v. Kennedy*, 460 F. Supp. 268, 273 (D.D.C. 1978) ("The Court finds that a trade secret is a property interest within the scope of the Due Process Clause . . .").

<sup>14</sup> *Mathews v. Eldridge* (1976) 424 U.S. 319, 333 ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.").

<sup>15</sup> California Constitution, Article 1, Section 7(a).

<sup>16</sup> *People v. Ramirez*, 25 Cal. 3d 260, 264 (1979).

California law guarantees the confidentiality of certain categories of information submitted to the Commission, and thus, public utilities have a statutory interest in the confidentiality of information submitted to the Commission. For example, the California Uniform Trade Secrets Act protects trade secrets (defined as any information that derives independent economic value from not being generally known to the public) from public dissemination.<sup>17</sup> Similarly, the California Public Records Act provides: “Nothing in this chapter shall be construed to require the disclosure of records that are any of the following: corporate financial records, corporate proprietary information including trade secrets. . . .”<sup>18</sup> Given these statutorily conferred expectations of confidentiality in their business information, the disclosure of public utilities’ confidential documents, absent notice and opportunity to be heard, would be in violation of their due process rights under the California Constitution.<sup>19</sup>

Moreover, while the underlying docket is “legislative,”<sup>20</sup> the Commission’s adopted process is not “legislative” in nature, and therefore the docket’s designation does not allow the Commission to avoid due process requirements.<sup>21</sup> Rather, because the final determination of whether to release a party’s confidential information will be made by the Commission’s Staff on a case-by-case basis, impacting only the party whose information may be released based on the

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<sup>17</sup> See Cal. Civ. Code §§ 654–655, 3426–3426.10.

<sup>18</sup> Cal. Gov’t Code § 6254.15.

<sup>19</sup> See, e.g., *Horn v. County of Ventura*, 24 Cal. 3d 605, 610 (1979) (requiring both “appropriate notice and an opportunity to be heard be given to persons whose property interests may be significantly affected”).

<sup>20</sup> Assigned Commissioner’s Scoping Memo and Ruling, R. 14-11-001 (August 11, 2015) (“Scoping Memo”), p. 4 (categorizing the proceeding as quasi-legislative).

<sup>21</sup> See *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445–446 (1915); *Horn v. County of Ventura*, 24 Cal. 3d 605, 612–613 (“It is . . . well settled . . . that only those governmental decisions which are adjudicative in nature are subject to procedural due process principles. Legislative action is not burdened by such requirements.”).

facts particular to each CPRA request, it is an adjudicative action subject to due process protections.<sup>22</sup>

Therefore, to avoid a Decision that abrogates the due process rights of public utilities under both the U.S. and California Constitutions, the Commission must grant rehearing and issue an order on rehearing that guarantees that public utilities submitting information to the Commission under a claim of confidentiality are afforded their due process rights prior to the release of that information.

**B. The Commission’s Delegation of Final Discretionary Determinations to Staff Regarding the Confidentiality of Documents Violates Public Utilities Code Section 583**

By broadly delegating to Staff authority to review and potentially release confidential documents without a final determination from the Commission, the Decision institutes a system whereby documents subject to a claim of confidentiality could be released to the public without an “order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding”<sup>23</sup> in violation of Section 583 of the Public Utilities Code.

The language of Section 583 is clear and unambiguous and starts with the baseline that “[n]o information furnished to the commission by a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public....” Exception is then made for matters made public “on order of the commission, or by the commission or commissioners in the course of a hearing or proceeding.”<sup>24</sup> It is consequential that the statute begins with the directive that “no information furnished to the

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<sup>22</sup> *Horn*, 24 Cal. 3d at 612 (citing *Bi-Metallic*, 239 U.S. at 445.).

<sup>23</sup> CA PU Code § 583.

<sup>24</sup> It is noteworthy that these exceptions – orders and hearings – reflect instances in which public utilities have an opportunity to exercise their due process rights to notice and the opportunity to be heard. *See supra* Section II.A.



commission ... shall be open to public inspection or made public,” because this highlights the intent of the legislature that *nondisclosure* of information is the default under the statute. Section 583 establishes a rubric where under the Commission must take an affirmative step – issue an order – to disclose *any* information not otherwise required by law to be made public. In light of the clear intent of the statute to ensure the Commission cannot easily divulge information for which it is a repository, there is simply no basis in the statute for the Commission’s assertion that an “order” delegating to Staff authority to release information without a final determination by the Commission is comparable to the “order of the commission” described in Section 583.<sup>25</sup>

The Decision also ignores the fact that Section 583 is part of an integrated statutory scheme that balances the Commission’s need to acquire and protect confidential information from public utilities against the need to ensure the protection of public utilities’ confidentiality interests. Without such a balancing, the effective and efficient collection of information is threatened. This integrated statutory scheme, and the balancing it accomplishes, is clear when reviewing the statutory chapter in its entirety. Section 583 is preceded by Sections 581 and 582, which establish the Commission’s informational and investigatory powers over public utilities. And it is followed by Section 584, which grants the Commission authority to require submission of reports detailing earnings and expenses, and wide latitude to require other reports. Section 583 balances these provisions by ensuring that the Commission *itself* must act prior to the release of submitted information, and that it must undertake such action in a formal context: order, hearing or proceeding – each of which offers procedural protections that afford public utilities

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<sup>25</sup> See *Pacific Gas & Electric Co. v. Department of Water Resources*, 112 Cal. App. 4th 477, 405 (“The statute’s words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, there is no need for judicial construction and a court may not indulge in it.” [internal citations and quotation marks omitted]); D. 10-07-050 (2010 Cal. PUC LEXIS 298), p. \*79 (declining to accept Verizon’s reading of a statute because the statutory language was clear and the Commission was legally barred from indulging in the recommended construction).

the opportunity to exercise their rights and protect their interests. By balancing the Commission's investigatory and informational authority against limitations on disclosure of collected confidential information, the legislature has crafted a statutory scheme that encourages public utilities to provide confidential information while assuring them that their interest in its continued confidentiality will be protected. The Commission must read the statutory scheme as a whole to give full effect to its complete intent.<sup>26</sup> The determination in the Decision that the particularized review required by Section 583 can be avoided by issuing a blanket "delegation order" would render the term "except on order of the commission" meaningless, ignore the plain meaning of Section 583, and eviscerate the overall design of the statutory scheme.

Finally, the Commission's assertion that a General Order can be an "order" for the purposes of Section 583,<sup>27</sup> even if correct, is immaterial as the Decision did *not* result in the issuance of a General Order that addresses the release of confidential information. The Commission highlights the fact that when General Order 66<sup>28</sup> was first issued it "order[ed] that six categories of information 'furnished to the Railroad Commission by public utilities should be open to public inspection' . . . and did not require the Commission to issue a separate 'order' each time documents in those categories were disclosed."<sup>29</sup> But presently, the Commission has not issued an order listing categories of public utility documents that staff can make available for review without further action by the Commission. If it had, then parties would have had the opportunity to challenge the Commission's decision – both at the time it was issued as a

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<sup>26</sup> See *Ste. Marie v. Riverside County Regional Park & Open-Space Dist.*, 46 Cal. 4th 282, 289 ("We must of course read statutes as a whole so that all parts are harmonized and given effect.").

<sup>27</sup> Decision, pp. 14–15.

<sup>28</sup> General Order 66 is now in its third iteration – General Order 66-C, entitled "Procedures for Obtaining Information and Records in the Possession of the Commission and its Employees and Commission Policies Thereon."

<sup>29</sup> Decision, p. 15.

proposed decision, and again on appeal, preserving the due process rights of the parties. This has not occurred.

For those reasons, the Commission must grant rehearing and issue an order on rehearing that complies with the mandates of Section 583 of the Public Utilities Code.

**C. The Commission Exceeded Judicially Established Limits on Agency Delegation by Entrusting Final Discretionary Determinations on Confidentiality to Staff**

Beyond violating Section 583, delegation of confidentiality determinations to Commission Staff exceeds judicially established limitations on agency delegation. In doing so, the Commission has not proceeded in the manner required by law.

The Commission may not delegate powers that involve final determinations involving the exercise of judgment or discretion in the absence of explicit statutory authorization.<sup>30</sup> While the Commission may delegate the performance of ministerial tasks, it cannot delegate duties that involve final policy judgment or discretionary decisions.<sup>31</sup> The California courts have clarified that while an agency can delegate ministerial tasks that reach beyond the formulaic application of standards, any delegated tasks that entail the use of judgment or discretion by the staff must be ratified by the agency:

When an act or duty is discretionary the information needed for the exercise thereof . . . need not be personally gathered. “[T]he rule that requires an executive officer to exercise his own judgment and discretion in making an order of such nature does not preclude him from utilizing, as a matter of practical administrative procedure, the aid of subordinates directed by him to investigate and report the facts and their recommendation in relation to the advisability of the order, and also to draft it in the first instance. [Citations.] *It suffices that the*

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<sup>30</sup> See *California School Employees Association v. Personnel Commission*, 3 Cal. 3d 139, 144 (1970).

<sup>31</sup> See *Bagley vs. City of Manhattan Beach*, 18 Cal. 3d 22, 24 (1976); see also *Schechter v. County of Los Angeles*, 258 Cal. App. 2d 391 (1968).

*judgment and discretion finally exercised and the orders finally made by the superintendent were actually his own . . . .*<sup>32</sup>

The Commission has previously recognized the limitations on its power to delegate:

[W]hile *California Schools*, *supra*, *Schechter*, *supra*, and other cases follow the general rule that agencies cannot delegate discretionary duties in the absence of statutory authority, they really stand for the narrower principle that *while agencies cannot delegate the power to make fundamental policy decisions or “final” discretionary decisions*, they may act in a practical manner and delegate authority to investigate, determine facts, make recommendations, and draft proposed decisions to be adopted or ratified by the agency’s highest decision makers, even though such activities in fact require staff to exercise judgment and discretion.<sup>33</sup>

Thus, as has been acknowledged by the Commission, the authority of an agency to delegate a task to Staff does not hinge on whether Staff must exercise judgment and discretion in the performance of that task, but whether the delegated duties requiring such judgment and discretion are subject to the additional check of final adoption by the agency.

A Staff determination about the confidential character of utility documents – i.e., whether an assertion of confidentiality with respect to a specific document provides a “specific substantive basis”<sup>34</sup> – is not a ministerial action, but requires the use of discretion and judgment, and must be ratified (or rejected) by a final determination from the Commission following notice to the affected party and an opportunity to object. For example, in determining whether a particular law or a Commission order either requires public disclosure of information, or conversely mandates that such information remain confidential, a Staff member would need to exercise judgment. Similarly, a determination whether a CPRA exemption applies or how to

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<sup>32</sup> *Schechter*, *supra*, 258 Cal.App.2d 391 at 397–398 (emphasis added); *see also California School Employees*, *supra*, 3 Cal. 3d at 144–145 (“public agencies may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action . . . Moreover, an agency’s *subsequent* approval or ratification of an act delegated to a subordinate validates the act, which becomes the act of the agency itself.”).

<sup>33</sup> D. 02-02-049, p. 6 (emphasis added).

<sup>34</sup> *See* Decision, p. 20, Section 3.2 (2).

balance interests equitably would require a Staff member to exercise judgment as to whether a particular record falls within the CPRA exemption or how to balance legal interests. Does the information in question constitute a financial record? Is it proprietary? Does it contain trade secrets? These determinations are required by CPRA and are not ministerial; they require action by the Commission itself, not merely Staff. In delegating to Staff the authority to make final determinations as to whether information submitted to the Commission under a claim of confidentiality should be released, the Commission has unlawfully ceded final discretionary decision-making authority.

The process established in the Decision for review and release of confidential documents delegates to Staff the authority to make “final” discretionary determinations regarding the release of confidential documents, contrary to the judicially imposed limits on agency delegation. The Commission must grant rehearing and issue an order on rehearing that negates the authority delegated to Staff by the Decision to release confidential information absent further Commission action.

**D. The Commission Failed to Proceed in the Manner Required by Law by Addressing Matters Outside the Scope of the Proceeding**

The Commission is legally obligated to limit its decisions to matters within the defined scope of a proceeding. Failure to do so constitutes a violation of the Commission’s Rules of Practice and Procedure. In this instance, the scope of the proceeding was limited to release of documents in the limited context of when a request for information was made under CPRA. By applying the adopted process for review and release of confidential documents even when no CPRA request has been made, the Commission has impermissibly exceeded the stated scope of this proceeding and has failed to proceed in the manner required by law.

The Commission’s Rules of Practice and Procedure define “scoping memo,” in pertinent part, as “an order or ruling describing the issues to be considered in a proceeding and the timetable for resolving the proceeding.”<sup>35</sup> In an investigation, such as the instant docket, the Commission is required to issue a preliminary scoping memo.<sup>36</sup> At a prehearing conference, or after one is convened, the assigned commissioner is required to issue a final scoping memo that “shall determine the . . . issues to be addressed in the proceeding.”<sup>37</sup> The courts have determined that the Commission violates the Public Utilities Code when it acts outside the announced scope of issues to be addressed in a proceeding. For example, in *Southern California Edison v. Public Utilities Commission*,<sup>38</sup> the court determined that the Commission had not proceeded in the manner required by law when it considered and acted upon a proposal that certain public utilities be required to pay prevailing wages to workers on energy-utility construction projects, because the issue of prevailing wage was not within the defined scope of the proceeding, as set forth in the preliminary and final scoping memos.

In the matter at bar, the scope of the proceeding was limited to procedures to evaluate the release of documents within the context of a CPRA request. The Order Instituting Rulemaking (“OIR”) initiated this proceeding to “consider revisions to General Order 66-C to comply with the California Public Records Act.”<sup>39</sup> The Preliminary Scoping Memo contained within the OIR identified three issues of principal concern, each of which explicitly relate to the Commission's

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<sup>35</sup> Rule 1.3.

<sup>36</sup> Rule 7.1 (c).

<sup>37</sup> Rule 7.3.

<sup>38</sup> 140 Cal. App. 4th 1085 (2006).

<sup>39</sup> See, Order Instituting Rulemaking to Improve Public Access to Public Records Pursuant to the California Public Records Act, R. 14-11-001 (November 6, 2014), Ordering Paragraph 1.

compliance with the CPRA.<sup>40</sup> Finally, the final Scoping Memo identified eight issues as within the scope of the proceeding, all of which related to compliance with the CPRA.<sup>41</sup> The defined scope of this proceeding excludes the adoption of processes that apply to the release of documents by the Commission in any situation other than in response to a CPRA request.

The Decision, however, ignores the boundaries placed around the proceeding by the Scoping Memo and authorizes the release of documents outside the context of a CPRA request.<sup>42</sup> By addressing matters that were not within the defined scope of the proceeding, the Commission has violated its own rules of practice and procedure and has not proceeded in the manner required by law.

### **III. CONCLUSION**

Because it allows for the release of confidential information to the public without appropriate notice and opportunity for the information's owner to respond, the Commission's Decision violates U.S. and California Constitutional protections of due process rights. The Commission's Decision further violates statutory and judicial limitations on the Commission's authority by delegating to Staff authority to determine, absent further Commission action, whether to release documents, as well as violating the Commission's own Rules by exceeding the scope of the present proceeding.

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<sup>40</sup> *Id.* at p. 5 (Issues 1–3).

<sup>41</sup> Scoping Memo, pp. 2–3.

<sup>42</sup> *See* Decision, p. 19 (“Any documents submitted to the Commission after the effective date of this decision that are not marked confidential may be released by Commission staff, with no formal action by the Commission required.”); *see also*, Decision p. 20 (“Any documents submitted to the Commission on or after 30 days from the effective date of this decision that only have a general marking of confidentiality . . . may be released by Commission staff, with no formal action by the Commission required.”).

That the Commission has stated that this “proceeding remains open for further refinement and improvement of the Commission’s processes”<sup>43</sup> is irrelevant, as the Decision itself effectuates an unlawful delegation of authority and has the present potential to cause irreparable harm to public utilities, in violation of their due process rights, should confidential documents be released under the regime established in the Decision. As such, immediate action is necessary to correct the Decision and prevent the impermissible release of confidential information.

For the foregoing reasons, the Commission should grant rehearing of the Decision and issue an order on rehearing that: (1) ensures that entities submitting confidential information to the Commission are afforded due process prior to the release of that information; (2) complies with the mandates of Section 583 of the Public Utilities Code; (3) negates the authority delegated to Staff to release confidential information absent further Commission action; and (4) restricts all determinations contained in the Decision to matters within the defined scope of the proceeding.

Respectfully submitted September 26, 2016 at San Francisco, California.

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